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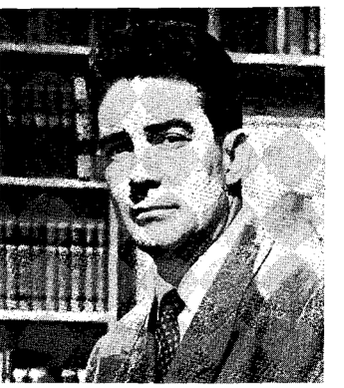

DAN SMOOT

UNION OFFICIALS: ABOVE AND BEYOND THE LAW

On May 13, 1963, employees of Kelsey-Hayes Company in Orangeburg, South Carolina, voted (245-171) against joining the International Association of Machinists, AFL-CIO. Two months later, the regional director of the National Labor Relations Board ruled that the election was invalid and must be set aside. The company appealed to higher echelons of the NLRB. On February 14, 1964, NLRB upheld its regional director, ruling that the Kelsey-Hayes Company must conduct another election to see whether its employees wanted to join IAM. The company has appealed to the Supreme Court.(1)

The NLRB concedes that, in the first election, the company exerted no pressures (direct or indirect, subtle or otherwise) to persuade or prevent employees from voting exactly as they pleased. The 245-171 vote by employees reflected their voluntary choice, freely expressed, in secret ballot, in compliance with all rules and regulations prescribed by the NLRB, without hint of coercion or "illegal campaigning" by the employer. Why did the NLRB set the election aside and order the company and its employees to suffer the turmoil and disruption-of-production inevitable in a heated union election? Because the union lost!

What *pretext* did NLRB use for invalidating the election? The NLRB said that "third parties" in the community took too much interest in the election and that resulting community attitudes affected the voting of employees in the union election. The regional NLRB representative said a "massive campaign" — not in the plant, but in the community of Orangeburg — of "speeches, editorials, radio broadcasts, newspaper advertisements, leaflet distribution, and visits to the homes of employees destroyed the laboratory atmosphere, which the Board seeks for elections." He conceded that the campaign was not directed, inspired, financed, or in any way caused by the Kelsey-Hayes Company or its officials. He did, however, accuse the company of being "unfair," for *allowing* a local newspaper editor to write editorials that the NLRB and the union did not like! The NLRB did not criticize the union for advertisements, leaflet distribution, and "visits to the homes of employees."(1)

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The NLRB was created by the National Labor Relations Act (Public Law 74-198, signed by President Franklin D. Roosevelt on July 5, 1935, generally called the Wagner Act). The law authorized the NLRB to investigate unfair labor practices by *employers*; to prevent *employers* from engaging in unfair labor practices; to formulate complaints (based on accusations made by unions or individuals) against *employers*. NLRB can command appearance of *employers* (within 5 days if the Board wishes) for formal hearing on complaints. It can find the employer guilty, and pronounce sentence against him. The sentence is generally an NLRB order telling the employer he must do something which a union wants done, or refrain from something which a union dislikes. The Board can issue a complaint and hold hearings concerning one set of accusations against an employer, and then issue an order involving different accusations — which means that the NLRB can charge an employer with one offense and find him guilty of another.[2]

In a free society, an agency of government empowered to settle disputes between individuals or private organizations should represent neither party to the controversy, but should act impartially. Note, however, that the NLRB is empowered to act *against* employers, *for* unions — employers being presumed, apparently, to have no rights.[2]

In order to prohibit tyrannical concentrations of power in any one agency of the federal government, our Constitution divided government into three distinct branches: (1) the legislative which makes law; (2) the executive which administers the law and (3) the judiciary which adjudicates the law. Notice, however, that the NLRB writes its own laws (that is to say, it has broad authority to make rules which have the effect of law), does the investigating and enforcing of its own laws, adjudicates alleged violations, and pronounces sentences of guilt.[2]

An employer can appeal an NLRB decision, but it is a costly and time-consuming process. He must first appeal an NLRB decision to a higher level of the NLRB itself. After he has made all possible appeals to the NLRB, the employer (if he still has money and time to spend on litigation) can appeal to the federal courts. When such cases reach the Supreme Court, it is customary (almost ritualistic) for the court to uphold NLRB decisions against employers. On rare occasions when *unions* appeal an NLRB decision, however, the Supreme Court can generally be expected to reverse the NLRB. There have also been cases of the NLRB reversing itself — when union leaders, with powerful political influence in the White House, protest an NLRB ruling not entirely to their satisfaction.

Government favoritism of *unions* means favoritism of union *officials*, not of workers. Many NLRB and federal court decisions violate not only rights of the employer, but also of workers themselves. Indeed, some endanger the security of the nation.

Cases In Point

The National Labor Relations Board (NLRB) has ruled that unions have a right to force employers to furnish the names, job descriptions, and salaries of all employees. This requires employers to divulge confidential information that could be used to harm their company — a heavy risk when gangsters or petty crooks are in the union. It invades the privacy of employees, divulging confidential information about them. It also endangers national security: many companies do classified work of vital importance to national defense; yet, federal labor laws and NLRB rulings force them to give complete job descriptions of all employees to union officials, even in cases when the union is known to be infiltrated or controlled by communists.[3]

In August, 1955, the NLRB ruled that a union, as an employer, in handling its own employee affairs, can engage in practices which the NLRB calls "unfair" if engaged in by other employers. One union owns a newspaper, which it operates as a business, apart from its normal "labor activities." The union does not represent employees of

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the kind it has on its payroll to run the newspaper. Another union, which does represent such workers, tried to organize the union-owned newspaper's employees. The NLRB ruled that the owner in this case (a union) could refuse to negotiate with the union trying to organize the workers.[4]

Federal law and NLRB rulings will not permit an employer (in a unionized company) to give employees wage raises without union permission. Union officials habitually refuse to permit a wage increase until they have made a controversial issue of it:

— A company has had an increase in business and profits. The reason could be that workers, previously inefficient because inexperienced in their particular jobs, have become more productive. Management thinks the employees should be rewarded with a general wage increase. If management gives the increase without permission of union officials, the union can charge management with unfair labor practices. Under federal law, and in conformity with its own policies, NLRB will uphold union officials. If the employer wants to give his employees a raise, he must first ask union officials. Union officials, prohibiting any news or notice of this to employees, start agitation in the plant, telling workers that they are underpaid and that management is exploiting them. After doing their most to create discontent and hatred of management among employees, the union demands negotiations for a wage raise. Once the negotiations start, it is rare for union officials to accept readily the wage increase which the employer wanted to make in the first place. Union officials want publicity about their "struggle for higher wages," so that workers everywhere will hear about unions fighting for workers. If they are getting the kind of publicity they want, union officials may even press the matter to the point of calling a strike. Often, after a strike (which costs employees, in lost wages, thousands of dollars which they will never regain; which damages the company; and which may even cause much harm to a whole community, or to the economy of the entire nation), union officials settle for a wage raise which the company offered before union officials ever thought to ask for one.[5]

Remember that this practice, now commonplace in the United States, is approved by federal law enacted "to eliminate the causes of certain substantial obstructions to the free flow of commerce" — and by the federal administrative agency created to prevent "unfair labor practices."[2]

The NLRB has even found employers guilty of unfair labor practices for giving wage raises to employees in companies where employees do not belong to a union and do not wish to belong:

— A union decides to "organize" a company, and initiates an intense campaign among employees. Many weeks go by; but union officials do not ask for an election to determine whether employees want to join the union, because employees have made it emphatically clear that they do not want to join. Meanwhile, management gives its employees a wage increase. The union (without any pretense that it represents employees in the plant) accuses management of "unfair labor practices." On the basis of this accusation, NLRB makes a formal complaint against management, summons management officials to a hearing, and finds the company guilty as accused. This happens repeatedly, and consistently. The NLRB "reasoning":

"The natural effect of unilateral wage action is to undermine the union by demonstrating to the employees that they don't need a union to secure economic benefits, notwithstanding that the union is legitimately seeking to represent them."[5]

A standard policy of union officials is expressed by their phrase, "no contract, no work." It may be that union officials make demands that management considers outrageous, or even disastrous. That does not matter. If the old contract between union and management expires before management has agreed to union terms for a new one, the union calls a strike and closes the plant. Federal law, sanctioning the "no contract, no work" policy for unions, prohibits management from following the same policy:

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— A union had a contract, as bargaining agent for employees, with Quaker State Oil Refining Company. When the contract period was near an end, management and union officials entered negotiations for renewal. Union officials made demands which the company thought would be ruinous. Negotiations deadlocked, and the old contract expired before a new one had been made. In this case, company officials took the initiative to say "no contract, no work." They closed the plant. Union officials called this a "lockout." They accused the company of unfair labor practices. The NLRB found the company guilty as accused. The company appealed to the courts. On December 7, 1959, the Supreme Court upheld the NLRB, and lower courts. In short, the federal government says that union officials can close a plant if they cannot negotiate a contract; owners, however, cannot close their own plant for the same reason.[6]

As soon as the Wagner Act was passed, unions began efforts to "organize" hotel employees. If management of a hotel refused to bargain with a union trying to organize its employees, the union would accuse management of unfair labor practices and take its accusation to the NLRB. For more than 20 years, however, the NLRB refused to intervene in such cases — refused to give union officials the help they sought — ruling that NLRB had no jurisdiction in disputes involving hotels, because hotels do not engage in interstate commerce. In the 1950's, union officials made a determined effort to organize hotels in Miami. They failed. Hotel managers would not bargain with them. The NLRB upheld the policy it had followed since 1935: it would not intervene, ruling that it had no jurisdiction to consider union complaints against the Miami hotels. Union officials appealed to the courts. On November 24, 1958, the Supreme Court held for the unions—overturning the 23-year-old policy of the NLRB, ruling, in effect, that the NLRB must accept jurisdiction in union-hotel labor disputes.[7]

A union had a contract as bargaining agent for employees of Boston Gas Company. A large number of the company's employees disliked the union, resented being forced to belong and pay dues. In 1960, before the union contract expired, 30 percent of the employees petitioned NLRB for a decertification election — an election to determine whether a majority of employees wanted to get rid of the union. The petition was legal and regular; and NLRB granted it; but the election was not held. Union officials appealed. Before other legal steps were taken, the Eisenhower administration was replaced by the Kennedy administration; and President Kennedy appointed an NLRB member even more friendly to union officials than those appointed by President Eisenhower. The NLRB, previously known as the "Eisenhower Board," became the "Kennedy Board." The Kennedy Board reversed the Eisenhower Board in the Boston Gas Company case, ruling that employees had no right to have a decertification election.[5]

A similar case, showing that NLRB decisions are political rather than legal, involved General Motors and Walter Reuther's United Automobile Workers in Indiana. "Closed Shop," "Union Shop," "Agency Shop," and "Right-to-Work Laws" need to be explained before the GM-UAW case can be easily understood.

The Wagner Act of 1935 authorized the closed shop — which means, in essence, that the federal government authorizes monopolistic unions to force an employer to force all employees to join a union and pay dues, whether employers and employees like it or not. The Taft-Hartley Act of 1947 (which merely amended the Wagner Act) outlawed the closed shop, but authorized the union shop. The two are identical in effect. When a union has a closed-shop contract with a company, the company cannot hire an employee until *after* he joins the union. With a union-shop contract, the company can hire a non-union person, but must force him to join the union (or fire him) after he goes to work.[2]

Growing resentment of such compulsory unionism, on the part of victimized workers and of the public at large, stimulated demands for state right-to-work laws — state laws which say that neither unions nor management (nor anyone else) can force workers to join, or not join, a union. Twenty states now have such laws. American workers gen-

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erally do not like the big monopolistic unions, and will not join them voluntarily. Officials of these unions cannot sell their services to most American workers: they cannot, without force and intimidation, or government favoritism, persuade many American workers to join their unions. Hence, union membership declined in states that adopted right-to-work laws. The big monopolistic unions have waged a bitter, relentless, and expensive fight against right-to-work laws, using money, of course, confiscated from workers who are their unwilling captives in states that do not have right-to-work laws. Meanwhile, union officials contrived a means to circumvent state right-to-work laws: they invented the agency shop.

Employees of a company where a union has an agency-shop contract are not forced to join the union; but they are forced to pay union dues as if they were members.[8]

Indiana has a right-to-work law. After it was enacted, 14,000 General Motors employees in that state refused to join Walter Reuther's UAW. Reuther tried to negotiate an agency-shop clause in his contract with GM, so that the 14,000 would be forced to pay union dues even though they would not join the union. GM refused. UAW accused GM of unfair labor practices and took the case to NLRB. Early in 1961, while it was still the "Eisenhower Board," the NLRB ruled in favor of the 14,000 employees, against Walter Reuther. In September, 1961, NLRB (now become the "Kennedy Board") reversed the previous NLRB ruling and said that GM must grant Reuther the agency-shop agreement. General Motors appealed. In June, 1962, the Federal Court of Appeals in Cincinnati reversed the Kennedy Board, saying, in effect, that General Motors did not have to grant Walter Reuther an agency-shop agreement in Indiana. Reuther's UAW appealed to the Supreme Court. On June 3, 1963, the Supreme Court overturned the Court of Appeals decision, ruling, in effect, that General Motors must give Reuther the agency-shop agreement in Indiana. On that same day, the Supreme Court (in another case) did hold that states have a right to pass right-to-work laws which outlaw agency-shop agreements. In the GM-UAW case, the Court held that an agency-shop agreement does not violate the particular right-to-work law which the State of Indiana has; that it does not violate federal law; and that, therefore, unions could demand it.[8]

On January 20, 1964, the NLRB (in another case involving Reuther's United Automobile Workers) ruled that unions have the legal right to make an enforce their own "internal rules" — which means that union officials, backed by federal law, can control the working lives of union members, who cannot appeal for relief if they feel abused by any "law" or enforcement procedure imposed on them by the unions. Specifically, the NLRB ruled (in this January, 1964, decision) that union officials have the power to set production limits of workers in unionized plants, and have the power to fine any union member who produces more than union officials want him to produce.[9]

In February, 1964, a trial examiner of the NLRB ruled that, since union officials can fine members for over-producing, they can also fine members for crossing picket lines to work. The NLRB trial examiner said:

"There is no relevant difference between a union's action directed against members who violate a union rule against crossing their own picket line and action directed against members who produce more than a specified amount. If anything, it would appear that the former is more justified than the latter.[9]

Unions and Politics

Federal laws prohibit unions from spending membership dues for politics and lobbying (and similarly restrain businessmen from using corporate funds). Nonetheless, unions (by their own admission) spend vast amounts on radio and television broadcasts to the general public, most of the broadcasts clearly intended to create public support for legislation or political candidates approved by unions (or to create opposition to those not approved).[10] Unions also distribute tons of printed material, for political and lobbying purposes.

How do they escape prosecution? They claim that the millions they spend are contributed "vol-

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untarily" by union members — that they do not come from dues. "Voluntary" assessments upon union members for "educational" purposes are as compulsory as membership dues. There is no way for a union member to refuse making a "voluntary" contribution requested by union officials, except to quit his job and withdraw from the union.

It is interesting to examine the government's *pretense* of legality, in granting union officials virtual immunity to laws which are binding on other citizens.

In 1948, the Supreme Court ruled that the CIO could recommend and support candidates in its regular publications, provided there was no distribution to the general public, but to union members only. That same year, the government brought suit against Painters Local Union No. 481 for spending union funds on commercial radio spot announcements and newspaper ads in a political campaign against United States Senator Robert A. Taft (Republican, Ohio). The case went no further than the U. S. Circuit Court, which ruled in favor of the union, using the earlier Supreme Court decision as its basis, even though general public distribution was obvious. The federal government did not appeal.[11]

In 1951 the government brought criminal action against General Laborers' Local No. 264 for spending union funds on the campaign of Theodore Leonard Irving, president of the Local, who ran for Congress. The District Court ruled the union not guilty. The government did not appeal.[11]

In 1954, the federal government brought suit against Walter Reuther's UAW for using union funds to campaign for several candidates in political races, and to advocate certain political views. The charge against the union centered on a broadcast, sponsored by the union, in which political candidates were named and endorsed, and their political philosophy and voting records extolled — in other words, a purely political broadcast, paid for with money taken away from union members.[11]

On March 11, 1957, the Supreme Court considered this case against the UAW, sending it back to a lower court for trial, but laying down such requirements for proof of guilt that conviction of the union officials was impossible. Justice Felix Frankfurter wrote the majority opinion, holding that, before the lower court could find union officials guilty of misusing union funds for political purposes, the prosecution must prove: (1) that the union's political broadcast constituted "active electioneering," and not simply a statement of "the record of particular candidates on economic issues"; (2) that the broadcast was actually paid for with money taken from members for dues, and not with money "obtained" from union members "on a voluntary basis"; (3) that the broadcast actually reached the public at large, and was not listened to only by union members; and (4) that, in sponsoring the broadcast, the union really intended "to affect the results of the election." The lower court trial ended in acquittal.[11]

To find proof of the volume and effectiveness of union officials' illegal political campaigning with union funds, one need only to study the composition of the present Congress of the United States. Of the 435 members of the House of Representatives, 190 are supported by union officials — another 14 are "approved" by them. Of the 100 United States Senators, 56 are supported by AFL-CIO officials.[12]

What To Do

United States Senator Barry Goldwater (Republican, Arizona) has listed some of the special privileges which federal law (or policy) grants to monopolistic unions:[13]

"(1) Almost total immunity under the anti-trust laws; (2) Immunity from taxation; (3) Immunity from injunctions by federal courts; (4) Authority to use union funds for purposes not related to collective bargaining even where union membership is compulsory; (5) Power to compel workers to join the union as a condition of continued employment; (6) The right of a union selected by a *majority* of the workers to bargain for *all* employees . . . . [including] the right to bargain for those who were compelled to join

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the union as well as those who can be arbitrarily denied membership; (7) Power to compel the employer to bargain exclusively with the majority union; (8) Absolute authority to deny union membership to workers employed in the bargaining unit, on any grounds or for no reason at all; (9) The right, in some situations, to invade the privacy of workers, even against their wishes . . . . [depriving union members] of a legal right enjoyed by all other members of society; (10) The right, in some situations, to compel employers to make available for union use the private property of the employer; (11) The right to compel the employer to provide protection against any physical violence on the part of workers who resist invasion of their privacy; (12) . . . [immunity] from the payment of damages for personal and property injuries inflicted on employers or others by union members engaged in activities, such as strikes or picketing . . . . even in situations where such activities have been officially authorized and directed by the union; (13) The right to strike for objectives wholly unrelated to any proper subject of collective bargaining . . . . in contrast to the severely limited right of an employer to engage in a lockout; (14) The right in some situations, to examine an employer's books and records — including those containing such confidential data as costs, profits, and prices; (15) And finally, the almost complete immunity of unions from any liability, penalty, or restriction under State law under the doctrine of Federal preemption . . . ."[13]

The people must elect a Congress which will repeal all federal labor laws. The federal government has no business in this field. It is the duty of state and local governments to protect life, liberty, and property of employees, employers, union officials, and innocent bystanders — equally; and to give equal protection to, and impose equal responsibility upon, business organizations and union organizations.

Federal tax laws, anti-trust laws, and election laws are stews of inequities and contradictions. Until they are repealed, however, Congress should make them applicable to union officials and union organizations in the same way and degree, as to other individuals and organizations.

FOOTNOTES

(1) "Free Speech for Unions Only," *The Richmond News Leader,* reprinted in *Human Events,* April 4, 1964, p. 12
(2) *Why The Taft-Hartley Law?* by Irving G. McMann, General Counsel, House Committee on Education, 80th Congress, Committee for Constitutional Government, Inc., New York City, 1950, 288 pp.
(3) *The Boston Post,* February 20, 1955, p. 4; *CIO News,* October 17, 1955, p. 7
(4) "News Section," *Human Events,* September 10, 1955
(5) "The NLRB, Tool of Union Leaders," *The Labor Digest,* Vol. 34, No. 2, April, 1961, pp. 1, 8
(6) *The Wall Street Journal,* December 8, 1959
(7) Texas Hotel Association News Letter No. 147, March 3, 1959
(8) "Important Decision," *The Arizona Republic,* July 30, 1962; *U. S. News & World Report,* June 17, 1963, pp. 87-8
(9) "For Unions—New Power Over Members," *U. S. News & World Report,* February 17, 1964, p. 103
(10) For further discussion of political activities by unions, see this *Report,* "COPE," April 6, 1964; "New Guide to AFL-CIO radio and TV," *The Machinist,* August 22, 1963.
(11) *Through The Looking Glass,* by James M. Brewbaker and Augustine R. Kelley, The American Affairs Institute, 51 pp.
(12) "How The Unions Came Out In The Elections," *U. S. News & World Report,* November 19, 1962, p. 99
(13) Speech by U. S. Senator Barry Goldwater (R., Ariz.) to American Bar Association, August 8, 1962, *Congressional Record,* September 11, 1962, p. A6694 (daily)

WHO IS DAN SMOOT?

Born in Missouri, reared in Texas, Dan Smoot went to SMU in Dallas, getting BA and MA degrees in 1938 and 1940. In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for a doctorate in American Civilization.

In 1942, he left Harvard and joined the FBI. As an FBI Agent, he worked for three and a half years on communist investigations in the industrial Midwest; two years on FBI headquarters staff in Washington; and almost four years on general FBI cases in various parts of the nation.

In 1951, Smoot resigned from the FBI and helped start Facts Forum. On Facts Forum radio and television programs, Smoot spoke to a national audience, giving *both* sides of controversial issues.

In July, 1955, he resigned and started his present independent publishing and broadcasting business — a free-enterprise operation financed entirely by profits from sales: sales of *The Dan Smoot Report,* a weekly magazine; and sales of a weekly news-analysis broadcast, to business firms, for use on radio and television as an advertising vehicle. The *Report* and the broadcast give only *one* side in presenting documented truth about important issues — the side that uses the American Constitution as a yardstick. The *Report* is available by subscription; and the broadcasts are available for commercial sponsorship, anywhere in the United States.

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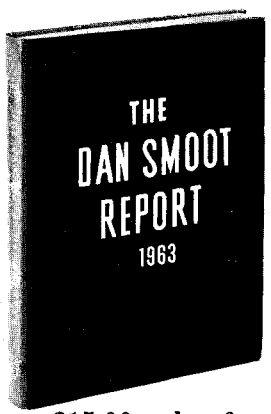

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